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**T&E – 2005 - 04**

**To:** Larry Doyle, Chief Legislative Counsel

**From:** Randolph Godshall, Chair, Trust and Estates Executive Committee  
W. F. Docker, Chair, Trust and Estates Administration Subcommittee  
Richard Burger, Member, Trusts and Estates Executive Committee

**Re:** Project No. 2004-02  
Unitrust Conversion Provision  
Creation of new Sections 16336.1 through 16336.4 and amendments to  
Sections 16328, 16335, 16336 and 16338 of Chapter 3 of Part 4 of  
Division 10 of the California Probate Code

**Committee/Section:** Trusts and Estates Executive Committee

**Date of Approval:** June 5, 2004

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**Digest:** In January of 2004, the United States Treasury issued important new regulations under Internal Revenue Code §643. T.D. 9102, 69 Fed. Reg. 12 (Jan. 2, 2004). Among other changes, these regulations provide new opportunities to utilize a "unitrust" in lieu of a traditional "income" trust. This proposal authorizes the conversion of an income trust to a unitrust, consistent with the new Treasury regulations.

**Purpose:** Many trusts provide for the distribution of "income" to the current trust beneficiary. "Income" has traditionally included rent, interest and dividends, but not capital gains. Yet most trustees are now subject to the prudent investor rule, as set forth in the Uniform Prudent Investor Act (Probate Code §§ 16002(a), 16003, 16045-16054). The prudent investor rule encourages trustees to focus on the "total return" of trust assets. A trustee who invests under the prudent investor rule may find that the trust produces very little current income (e.g., dividends and interest), while the total value of the trust assets increases significantly. The beneficiary entitled to receive income will not derive any benefit from the increasing value of the trust. If the trustee modifies the investments to generate more income, the trustee may sacrifice total return and run afoul of the prudent investor rule.

Probate Code §16336 allows the trustee to make an "adjustment" to income under these circumstances by allocating an amount of principal to income. This allows the trustee to continue to invest under the prudent investor rule and treat the income and remainder beneficiaries impartially. However, this remedy is not without its problems. For example, the adjustment may be made only by a trustee who is not a beneficiary of the trust (including a present, future or remote beneficiary). In addition, since the decision of whether to adjust, and by how much, is an inexact one, many independent trustees are reluctant to utilize the adjustment power. The new Treasury regulations provide another solution to this problem. The distribution of a "unitrust" amount, equal to a fixed percentage of the value of the trust assets, will qualify as a distribution of "income" for both transfer and income tax purposes – provided the unitrust percentage is at least 3% and no more than 5% and provided these distributions are made pursuant to a state statute. Thus far, seventeen states have adopted a unitrust statute. California has not yet done so.

The proposed statutory additions and amendments to Chapter 3 of Part 4 of Division 10 of the California Probate Code will allow a trustee to convert a trust into a unitrust, and distribute an amount equal to between 3% and 5% of the fair market value of its assets each year, in lieu of distributing trust income.

The proposal allows a trustee to convert to a unitrust without court order. The conversion may proceed if the trustee notifies the trust beneficiaries of the proposed conversion and no beneficiary objects. The trustee is required to provide a detailed notification to all trust beneficiaries. When a trustee converts to a unitrust under Section 16336.1, the unitrust percentage must be 4%.

Proposed Section 16336.1 includes numerous default provisions which will apply to a unitrust. Some of these can be changed in the discretion of the trustee and others can be changed only with written consent of all beneficiaries or by court order.

Proposed Section 16336.2 allows the trustee to use a unitrust percentage other than 4%, provided that the percentage is at least 3% and no more than 5%. This can be done either by unanimous written consent of the beneficiaries or by court order.

Proposed Section 16336.3 provides for the reconversion from a unitrust to an income trust, or for a change in the unitrust percentage.

Proposed Sections 16336.1 through 16336.4 refer to notification under Chapter 5 of Article 9 of the Probate Code (commencing with Section 16500). This proposed Chapter is found in SB 1021, which passed the Senate on January 28, 2004 and is currently pending in the Assembly.

Proposed Section 16336.4 includes a "virtual representation" provision. Many states have adopted virtual representation provisions that apply to all trust proceedings. However, this section is limited to proposed unitrust conversions and related actions. Under proposed Probate Code §16501 (part SB 1021, which was recently signed by the Governor), the trustee must notify all beneficiaries who are eligible to receive income from the trust as well as all beneficiaries who would receive principal if the trust were terminated at the time the notice is given. This could create problems for a trustee who wishes to convert to a unitrust. Without Section 16336.4, a trustee could not convert to a unitrust under Section 16336 if there were even one minor or incapacitated beneficiary, or if there could be a beneficiary who has not yet been born or whose identity cannot be identified with certainty because someone might die or other

circumstances might change before the trust relationship ends. Instead, it would be necessary to have a guardian ad litem appointed by the court to represent the minor beneficiary's interests. Section 16336.4 would allow the trustee's notice to bind the minor, or other incapacitated beneficiary, so long as notice is given to another legally competent beneficiary that has a substantially identical interest and has no conflicting interest. The section also makes it clear that a person who is not otherwise legally competent, but who is represented by a guardian, conservator, or other legal representative can be bound by the guardian, conservator, or other legal representative.

<b>Illustration:</b>	Decedent named his surviving spouse as the trustee of a trust. The trust provides for the distribution of income to the surviving spouse, with the remainder passing to the decedent's children from a previous marriage upon the surviving spouse's death. The trustee's investment in bonds would increase trust income, but with little potential for appreciation. This would favor the income beneficiary. The trustee's investment in stocks would enhance the potential for appreciation, but produce very little income. This would favor the remainder beneficiaries. The trustee cannot invest for total return and make an adjustment to income under Section 16336(a), since the trustee is a beneficiary of the trust. This proposal would allow the trustee to convert to a 4% unitrust, and invest for total return. Before conversion, the income and remainder beneficiaries would likely urge opposite investment approaches. After conversion, however, the income and remainder beneficiaries should instead share the common goal of obtaining the highest total return.
<b>Application:</b>	The proposed additions and amendments would be available to most trustees of non-charitable trusts. The proposal would not be available if the governing instrument prohibited a unitrust, or in other limited circumstances.
<b>Documentation:</b>	The author is not aware of any formal studies or documentation.
<b>History:</b>	No history of a similar legislative proposal is known to exist.
<b>Pending Litigation:</b>	None known.
<b>Likely Support or Opposition:</b>	The Committee believes that the proposed legislation will more than likely find support by professional and corporate trustees, as well as counsel for individual (non-professional) trustees.
<b>Fiscal Impact:</b>	No anticipated fiscal impact.

**Germaneness:** Drafting a proposal such as this requires an understanding of the pertinent tax and accounting laws, as well as an appreciation of the interests of both trustees and trust beneficiaries. The members of the Trusts and Estates Executive Committee have interest and expertise in these areas.

**Text:** The following Sections are added as 16336.1 to 16336.4, and the following amendments are made in Sections 16328, 16335, 16336 and 16338, of Chapter 3 of Part 4 of Division 10 of the California Probate Code:

**16328.** "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the accounting period, plus or minus transfers under this chapter to or from income during the accounting period. *During any period when the trust is being administered as a unitrust, either pursuant to the powers conferred by Sections 16336.1 through 16336.3 or pursuant to the terms of the governing instrument, "net income" means the unitrust amount, provided that the unitrust amount is no less than 3% and no more than 5% of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis.*

**16336.1.** *(a) Unless expressly prohibited by the governing instrument, a trustee may convert a trust into a unitrust as described in this section. A trust that limits the power of the trustee to make an adjustment between principal and income or modify the trust does not affect the application of this section unless it is clear from the governing instrument that it is intended to deny the trustee the power to convert into a unitrust that is provided by this section.*

*(b) The trustee may convert a trust into a unitrust without court order if all of the following apply:*

*(1) The conditions set forth in subdivision (a) of Section 16336 are satisfied.*

*(2) The unitrust proposed by the trustee conforms to the provisions of subdivision (e) of this section.*

*(3) The trustee gives written notice of the trustee's intention to convert the trust into a unitrust and furnishes the information required by subdivision (c). The notice shall comply with the requirements of Chapter 5 (commencing with Section 16500).*

*(4) There is at least one legally competent beneficiary who is currently eligible to receive income from the trust.*

*(5) There is at least one legally competent beneficiary who would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.*

*(6) No legally competent beneficiary objects to the proposed action in a writing delivered to the trustee within the period prescribed by Section 16502(d) or such longer period as is specified in the notice described in subdivision (c).*

*(c) The notice described in subdivision (b)(3) shall include a copy of Sections 16336.1 through 16336.4 and all of the following additional information:*

*(1) A statement that the trust will be administered in accordance with the provisions of subdivision (e) of this section and the effective date of the conversion.*

*(2) A description of the method to be used for determining the fair market value of trust assets.*

*(3) The amount actually distributed to the income beneficiary during the previous accounting year of the trust.*

*(4) The amount that would have been distributed to the income beneficiary during the previous accounting year of the trust had the trustee's proposed changes been in effect during that entire year; and*

*(5) A description of the discretionary decisions the trustee proposes to make as of the conversion date under subdivision (f) of this section.*

*(d) In deciding whether to exercise the power conferred by this section, a trustee may consider, among other things, the factors set forth in subdivision (g) of Section 16336.*

*(e) After a trust is converted to a unitrust, all of the following shall apply, except to the extent that the court orders otherwise or the parties agree otherwise pursuant to Section 16336.2:*

*(1) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.*

*(2) The term "income" in the governing instrument shall mean an annual distribution (the unitrust amount) equal to 4% (the payout percentage) of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:*

*(A) the three preceding years, or*

*(B) the period during which the trust has been in existence.*

*(3) During each accounting year of the trust following its conversion into a unitrust, the trustee shall, as early in the year as is practicable, furnish each income beneficiary with a statement describing the computation of the unitrust amount for that accounting year.*

*(4) The trustee shall determine the net fair market value of each asset held in the trust no less often than annually; provided, however, that the following property shall not be included in determining the unitrust amount:*

*(A) Any residential property or any tangible personal property that, as of the first business day of the current accounting year, one or more current beneficiaries of the trust have or have had the right to occupy, or have or have had the right to possess or control (other than in his or her capacity as trustee of the trust), which property shall be administered according to other provisions of this chapter as though no conversion to a unitrust had been effected.*

*(B) Any asset specifically devised to a beneficiary to the extent necessary, in the trustee's reasonable judgment, to avoid a material risk of exhausting other trust assets prior to termination of the trust. All net income generated by a specifically devised asset excluded from the unitrust computation pursuant to this subsection shall be accumulated or distributed by the trustee according to the rules otherwise applicable to such net income under other provisions of this chapter.*

*(C) Any asset while held in a testator's estate or a terminating trust.*

*(5) The unitrust amount, as otherwise computed pursuant to this subdivision, shall be reduced proportionately for any material distribution made to accomplish a partial termination of the trust required by the governing instrument or made as a*

result of the exercise of a power of appointment or withdrawal (other than distributions of the unitrust amount) and shall be increased proportionately for the receipt of any material addition to the trust (other than a receipt that represents a return on investment) during the period considered in subsection (2) above in computing the unitrust amount. For the purpose of this subsection (5), a distribution or an addition shall be material where the net value of such distribution or addition, when combined with all prior distributions made or additions received during the same accounting year, exceeds ten percent (10%) of the value of the assets used to compute the unitrust amount as of the most recent prior valuation date. The trustee may, in the reasonable exercise of its discretion, adjust the unitrust amount pursuant to this subsection even if the distributions or additions are not sufficient to meet the definition of materiality set forth in the preceding sentence.

(6) In the case of a short year in which a beneficiary's right to payments commences or ceases, the trustee shall prorate the unitrust amount on a daily basis.

(7) Unless otherwise provided by the governing instrument or determined by the trustee, the unitrust amount shall be considered paid in the following order from the following sources:

(A) from the net taxable income, determined as if the trust were other than a unitrust.

(B) from net realized short-term capital gains.

(C) from net realized long-term capital gains.

(D) from tax-exempt and other income.

(E) from principal of the trust.

(8) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust amount.

(f) The trustee shall determine, in the trustee's discretion, all of the following matters relating to administration of a unitrust created pursuant to this section:

(1) The effective date of a conversion to a unitrust.

(2) The frequency of payments in satisfaction of the unitrust amount.

(3) Whether to value the trust's assets annually or more frequently.

(4) What valuation dates to use.

(5) How to value nonliquid assets.

(6) The characterization of the unitrust payout for income tax reporting purposes; provided, however, that the trustee's characterization shall be consistent from time to time.

(7) Any other matters necessary for the proper functioning of the unitrust.

(g) A conversion into a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing the exercise of a power of appointment over or withdrawal of all or a portion of the principal.

(h) A trustee may not convert a trust into a unitrust in any of the following circumstances:

(1) If payment of the unitrust amount would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

*(3) If possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to convert.*

*(4) If possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual, and the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.*

*(5) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.*

*(i) If subsection (3) or (4) of subdivision (h) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument. If subsection (3) or (4) of subdivision (h) applies to all of the trustees, the court may order the conversion as provided in subdivision (b) of Section 16336.2.*

*(j) A trustee may release the power conferred by this section to convert to a unitrust if (i) the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsections (3), (4), or (5) of subdivision (h), or (ii) the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subdivision (h). The release may be permanent or for a specified period, including a period measured by the life of an individual.*

**16336.2.** *(a) The trustee may convert a trust into a unitrust upon terms other than those set forth in subdivision (e) of Section 16336.1, without court order, if all of the following apply:*

*(1) The conditions set forth in subdivision (a) of Section 16336 are satisfied.*

*(2) The trustee gives written notice of the trustee's intention to convert the trust into a unitrust and furnishes the information required by subdivision (c) of Section 16336.1. The notice shall comply with the requirements of Chapter 5 (commencing with Section 16500).*

*(3) The payout percentage to be adopted is at least 3% and no greater than 5%.*

*(4) There is at least one legally competent beneficiary who is currently eligible to receive income from the trust.*

*(5) There is at least one legally competent beneficiary who would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.*

*(6) All legally competent beneficiaries entitled to notice under Section 16501 consent in writing to the proposed action after having been furnished with the notice described in subdivision (c) of Section 16336.1.*

*(b) The court may order the conversion of a trust into a unitrust as provided in this subdivision.*

*(1) The trustee may petition the court to approve the conversion to a unitrust if (i) a beneficiary timely objects to a proposed conversion to a unitrust, (ii) the trustee proposes to make the conversion upon terms other than those described in subdivision (e), (iii) subdivision (h)(3) or (h)(4) applies to all currently acting trustees, or (iv) for any other reason, the trustee determines, in its discretion, that such a petition is advisable. In no event, however, may the court authorize conversion to a unitrust with a payout percentage less than 3% or greater than 5%.*



*(2) A beneficiary may petition the court to order the conversion.*

*(3) The court shall approve the conversion proposed by the trustee or direct the conversion requested by the beneficiary if the conditions set forth in subdivision (a) of Section 16336 are satisfied and the court concludes that conversion of the trust on the terms proposed will enable the trustee to better comply with the provisions of subdivision (b) of Section 16335.*

*(4) In deciding whether to approve a proposed conversion or direct a requested conversion, the court may consider, among other things, the factors described in subdivision (g) of Section 16336.*

**16336.3.** *Unless expressly prohibited by the governing instrument, a trustee may reconvert the trust from a unitrust or change the payout percentage of a unitrust as provided in this subdivision.*

*(a) The trustee may make the reconversion or change in payout percentage without court order provided that:*

*(1) At least five years have elapsed since the most recent conversion to a unitrust;*

*(2) The trustee determines that reconversion or change in payout percentage would enable the trustee to better comply with the provisions of subdivision (b) of Section 16335;*

*(3) In the case of a proposed reconversion, the conditions set forth in subsections (4) through (6) of subdivision (b) of Section 16336.1 have been satisfied and the trustee gives written notice of the trustee's intention to reconvert the trust. The notice shall comply with the requirements of Chapter 5 (commencing with Section 16500).*

*(4) In the case of a proposed change in payout percentage, the conditions set forth in subsections (3) through (6) of subdivision (a) of Section 16336.2 have been satisfied and the trustee gives written notice stating the new payout percentage that the trustee proposes to adopt. The notice shall comply with the requirements of Chapter 5 (commencing with Section 16500).*

*(b) The trustee may make the reconversion or change in payout percentage at any time pursuant to court order provided that (i) the court determines that reconversion or change in payout percentage will enable the trustee to better comply with the provisions of subdivision (b) of Section 16335, and (ii) in the case of a change in payout percentage, the new payout percentage is at least 3% and no greater than 5%. The court may enter an order under this subdivision (b) upon the petition of the trustee or any beneficiary.*

**16336.4.** *(a) Nothing in Sections 16336.1 through 16336.3 shall impose any duty on the trustee to convert or reconvert a trust or to consider a conversion or reconversion.*

*(b) The provisions of Section 16503(b) shall apply to all actions under Sections 16336.1 through 16336.3 taken pursuant to notice of proposed action given in compliance with Chapter 5 of Article 9 (commencing with Section 16500); provided, however, that a trustee shall not be liable to any beneficiary entitled to notice thereunder who is not legally competent at the time notice is given where (i) notice has been given to another beneficiary who is legally competent and has a substantially identical interest and no conflicting interest and (ii) that beneficiary has either given written consent, either before or after the action is taken, or fails to make timely objection to the proposed action.*

*(c) For purposes of this chapter, the term “legally competent,” when describing a beneficiary, shall include:*

*(1) A beneficiary who is not a minor and who has the capacity to object to the proposed action, and*

*(2) A beneficiary who is a minor or who lacks capacity to object to the proposed action but whose interests with respect to the proposed action are represented by a guardian, conservator, or other legal representative.*

**16335.** (a) In allocating receipts and disbursements to or between principal and income, and with respect to any other matter within the scope of this chapter, a fiduciary:

(1) Shall administer a trust or decedent's estate in accordance with the trust or the will, even if there is a different provision in this chapter.

(2) May administer a trust or decedent's estate by the exercise of a discretionary power of administration given to the fiduciary by the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter, and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of this chapter.

(3) Shall administer a trust or decedent's estate in accordance with this chapter if the trust or the will does not contain a different provision or does not give the fiduciary a discretionary power of administration.

(4) Shall add a receipt or charge a disbursement to principal to the extent that the trust or the will and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by a trust, a will, or this chapter, including the trustee's power to adjust under subdivision (a) of Section 16336 *and the trustee's power to convert into a unitrust or reconvert or change the unitrust payout percentage pursuant to Sections 16336.1 through 16336.3*, the fiduciary shall administer the trust or decedent's estate impartially, except to the extent that the trust or the will expresses an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion in accordance with this chapter is presumed to be fair and reasonable to all beneficiaries.

**16336.** (a) Subject to subdivision (b), a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(1) The trustee invests and manages trust assets under the prudent investor rule.

(2) The trust describes the amount that shall or may be distributed to a beneficiary by referring to the trust's income.

(3) The trustee determines, after applying the rules in subdivision (a) of Section 16335, and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with subdivision (b) of Section 16335.

(b) A trustee may not make an adjustment between principal and income in any of the following circumstances:

(1) Where it would diminish the income interest in a trust (A) that requires all of the income to be paid at least annually to a spouse and (B) for which, if the trustee did not have the

power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part.

(2) Where it would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

(3) Where it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(4) Where it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are so set aside.

(5) Where possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment.

(6) Where possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment.

(7) Where the trustee is a beneficiary of the trust. (c) Notwithstanding Section 15620, if paragraph (5), (6), or (7) of subdivision (b) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

(8) *During any period when the trust is being administered as a unitrust pursuant to the trustee's exercise of the power to convert provided in Section 16336.1 or 16336.2.*

(d) A trustee may release the entire power conferred by subdivision (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income in either of the following circumstances:

(1) If the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (1) to (6), inclusive, of subdivision (b).

(2) If the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subdivision (b).

(e) A release under subdivision (d) may be permanent or for a specified period, including a period measured by the life of an individual.

(f) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subdivision (a).

(g) In deciding whether and to what extent to exercise the power to make adjustments under this section, the trustee may consider, but is not limited to, any of the following:

(1) The nature, purpose, and expected duration of the trust.

(2) The intent of the settlor.

(3) The identity and circumstances of the beneficiaries.

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital.

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;

the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor.

(6) The net amount allocated to income under other statutes and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available.

(7) Whether and to what extent the trust gives the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(9) The anticipated tax consequences of an adjustment. (h) Nothing in this section or in this chapter is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

**16338.** In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under Section 16336, the sole remedy is to direct, deny, or revise an adjustment between principal and income. *In a proceeding with respect to a trustee's exercise or nonexercise of a power conferred by Sections 16336.1 through 16336.3, the sole remedy is to obtain an order directing the trustee to convert the trust to a unitrust, to reconvert from a unitrust, to change the distribution percentage, or to order any administrative procedures the court determines to be necessary or helpful for the proper functioning of the trust.*